



City of Raleigh North Carolina

MEMORANDUM

To: Raleigh Planning Commission
From: Case Planner James Brantley
Regarding: Z-24-10, Poole Road at Norwood Street
Date: December 9, 2010

At its November 9th meeting, the Planning Commission requested additional information, contained in this memo, regarding Z-24-10. This is a request to rezone 1.2 acres at the corner of Poole Road and Norwood Street from Residential-6 to Neighborhood Business CUD.

History of the Property

The building was constructed in 1948 and annexed in 1955. The R-6 zoning apparently was established at time of annexation. Originally the site contained the current store building and a separate dwelling. There is no record of when dwelling was demolished.

The property to the north and west was included in the King Charles Neighborhood Plan and was subsequently rezoned to Neighborhood Conservation Overlay District effective November 1, 2005 (Z-73-04). The Neighborhood Conservation Overlay District regulations are as follows:

Minimum lot size: 33,541 square feet (0.77 acre)
Minimum lot width: One hundred forty-four (144) feet
Front yard setback: Minimum of seventy-six (76) feet
Maximum building height: Two (2) stories

The property ownership last changed in 2008.

Police report

The following are 911 calls originating on the site between late November 2009 and the end of August 2010.

DATE	LOCATION	CALL CLASS
23-Nov-09	2405 POOLE RD	FOLLOW-UP INVESTIGATION

22-Dec-09	2405 POOLE RD	HIT&RUN EARLIER
23-Jan-10	2405 POOLE RD	ASSAULT-BY POINTING GUN
23-Jan-10	2405 POOLE RD	ASSAULT-BY POINTING GUN
26-Jan-10	2405 POOLE RD	TRESPASSING
14-Mar-10	2405 POOLE RD	TRAFFIC STOP
04-Apr-10	2405 POOLE RD	TRAFFIC STOP
10-Apr-10	2405 POOLE RD	SUSPICIOUS VEHICLE
13-Apr-10	2405 POOLE RD	SUSPICIOUS VEHICLE
18-Apr-10	2405 POOLE RD	SUSPICIOUS VEHICLE
24-Apr-10	2405 POOLE RD	FIGHT
26-Apr-10	2405 POOLE RD	ABANDONED VEHICLE
29-Apr-10	2405 POOLE RD	TRAFFIC STOP
12-May-10	2405 POOLE RD	ACCIDENT-VEHICLE/DAMAGE
16-May-10	2405 POOLE RD	SUSPICIOUS VEHICLE
31-May-10	2405 POOLE RD	TRAFFIC STOP
04-Jun-10	2405 POOLE RD	ACCIDENT-VEHICLE/DAMAGE
14-Jun-10	2405 POOLE RD	TRESPASSING
18-Jun-10	2405 POOLE RD	BEGGING
26-Jun-10	2405 POOLE RD	ACCIDENT-H&R/DAMAGE
09-Jul-10	2405 POOLE RD	DISTURBANCE
09-Jul-10	2405 POOLE RD	ALARM-HOLD-UP
04-Aug-10	2405 POOLE RD	ALARM-HOLD-UP
30-Aug-10	2405 POOLE RD	ASSAULT/OTHER

Special Use Permit/Board of Adjustment decision

On November 10, 1980 the Board of Adjustment granted the then owner of the store at 2405 Poole Road a special use permit to renovate the store (a nonconforming building) in excess of 15% of its tax value. Restrictions approved with the special use permit, which run with the property in perpetuity, are:

1. Grading and maintenance to prevent surface flooding onto an adjacent property, 2413 Poole Road.
2. No alcoholic beverages sold for on-site consumption.
3. No sound amplification on the subject property.
4. A permanent, solid 7' high wooden fence to be built and maintained on the boundary of the subject property and 2413 Poole Road.
5. The business would not open earlier than 7 AM or later than 11 PM Monday through Saturday, and not earlier than 1 PM or later than 6 PM on Sunday, without written consent of the owner of 2413 Poole Road.

The staff is uncertain that restrictions 1, 2 and 3 are being met. Restrictions 4 and 5 are not being met. The existing fence does not completely buffer 2405 from 2413 Poole Road.

In an affidavit of Emma Jean Fort, owner of 2413 Poole Road, dated November 14, 2010, Ms. Fort stated that the store on 2405 Poole Road could operate between 11 AM and 11 PM on Sundays. The affidavit renders the property in conformance with restriction 5 of the special use permit.

The applicant has submitted conditions dated December 8, 2010, that require the construction of the fence mentioned above (condition 18). Condition 17 prohibits sound amplification on the store site.

Conditions clarification

Assistant City Attorney Botvinick prepared comments on the zoning conditions submitted by the applicant at the November 9th Planning Commission meeting. Most of the comments relate to minor word changes and organization.

The main concern of the Planning Commission regarding the conditions on November 9th was condition E-iv, which states that "Retail sales, convenience and general buildings larger than 25,000 square feet" are prohibited. Attorney Botvinick has suggested that the phrase be replaced with "The maximum floor area gross of all buildings located on the rezoned property should not exceed 25,000 square feet." A copy of email correspondence from Assistant City Attorney Botvinick dated November 18, 2010, relating to the conditions, is attached.

The applicant subsequently submitted revised conditions, dated December 8, 2010 (attached) to address staff concerns regarding the conditions submitted on November 9th. Assistant City Attorney Botvinick has reviewed and commented on these revised conditions (see the attached email correspondence dated December 8, 2010). It was suggested that, among various specifics, condition E iv and v, related maximum floor area, be reworked. Condition 14, related to monetary contributions to Poe Elementary School, should be deleted as it is unrelated to the City Code Chapter 10. Condition 17 (prohibiting sound amplification) will be difficult to enforce for any dwelling that might be constructed on a second floor.

CC: Assistant City Attorney Botvinick, Dan Coleman, Mark Turner
Attachments: Most recently offered conditions dated December 8, 2010, November 18, 2010 email from Assistant City Attorney Botvinick